

REMARKS

This amendment is being filed in response to the non-final Office Action mailed December 17, 2010. In that Office Action, claims 20-25, 27-39, 41 and 42 were rejected on prior art grounds and claims 26 and 40 were indicated as allowable if rewritten into independent form. Claims 1-19 have previously been canceled. No claim amendments have been made. Accordingly, claims 20-42 remain pending in the application.

Allowable Subject Matter

Applicant notes that claims 26 and 40 have been indicated as allowable if rewritten into independent form. These claims have not been rewritten at this time due to the allowability of their base independent claims, as discussed below.

§103 Rejection

Claims 20-25, 27-39, 41, and 42 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Preston in view of Huang (2003/0133439A1). This rejection is respectfully traversed for the reasons discussed below.

In the rejection, Preston is relied upon as disclosing the subject matter of claims 20-25, 27-39, 41, and 42 except for the limitations: "periods of silence [that] comprise gaps in the data during which no modulation occurs" (claim 20), "periods of silence during which no frequency shift keying modulation occurs" (claim 29), and "periods of silence during which the data signal is unmodulated" (claim 34). For these, Huang is relied upon based primarily on its disclosure from FIG. 6 that shows the use of FSK 600a and a silence period 600b to implement an auxiliary coding that is used in a home networking environment to provide advanced training to computers and electronic appliances on the home network. According to the Office Action at Page 3, it would have been obvious to use this disclosure from Huang in Preston's system since Huang is "from the same field of endeavor" and "there is no new or unexpected result by doing so."

Applicant respectfully disagrees. As a threshold matter, Huang is non-analogous art since it is not in Applicant's field of endeavor and is not reasonably pertinent to the particular problem with which Applicant was involved. Huang relates to network communication in a

home over hardwired telephone lines. Applicant's field of endeavor is wireless communication generally, and data communication over wireless cellular systems in particular. Even at a fairly general level, these are not the same fields of endeavor and do not use the same equipment or software. Moreover, Huang is not reasonably pertinent to the particular problem with which Applicant was involved which, as discussed in paragraph [0003] of Applicant's published application, involved how to effectively transmit data through a voice channel of a wireless communication system without the vocoder completely attenuating the signal. Huang is totally unrelated to solving that problem, nor is there anything that has been identified in Huang concerning the FSK 600a and silence period 600b that would give one of ordinary skill in the art any reason to utilize those features of its auxiliary coding in place of Preston's sacrificial bits. Thus, Huang is non-analogous art that cannot be properly used with Preston in rejecting the claims.

Apart from the issue of non-analogous art, there is no teaching, suggestion, motivation, or other proper reason from Preston, Huang or the other prior art to conclude that one of ordinary skill in the art would make the combination suggested in the Office Action. Huang does not provide any discussion or other disclosure concerning its FSK 600a and silence period 600b that would provide one of ordinary skill in the art with any reason to utilize it in place of Preston's sacrificial bits. Without the knowledge gained from Applicant's own teaching, there would be no reason to make such a combination.

Huang is directed to a very specific problem unique to a particular home networking protocol used by the HomePhoneline Networking Alliance, as discussed in detail in Huang. It teaches the use of the auxiliary coding as a way to provide advance training to home computers and appliances that are on the network. This does not involve communicating data via a voice channel (and its vocoder) and there is nothing about the advance training solution provided by Huang that would apply to Preston's voice channel data communication.

Accordingly, Applicant respectfully submits that independent claims 20, 29, and 34 are not rendered obvious by these references and should be allowed. Claims 21-28, 30-33, and 35-42 each ultimately depend from one of these claims and should be allowed therewith.

Conclusion

In view of the foregoing, Applicants respectfully submit that all claims are allowable over the prior art. Reconsideration is therefore requested. The Examiner is invited to telephone the undersigned if doing so would advance prosecution of this case.

The Commissioner is hereby authorized to charge Deposit Account No. 07-0960 for any required fees, or credit any overpayment associated with this communication.

Respectfully submitted,

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